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March 20, 2003

BY ELECTRONIC SUBMISSION

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, NW
Washington, DC 20554

Re: Ex Parte Presentation, WC Docket Nos. 03-16

Dear Ms. Dortch:

Pursuant to Section 1.1206(b)(2) of the Commission's Rules, Z-Tel Communications, Inc. ("Z-Tel"), by its attorney, submits this notification of an *ex parte* meeting in the above-referenced proceeding on March 19, 2003. Participants in the meeting for Z-Tel included Tom Koutsy, Ron Walters (by telephone), and the undersigned. Commission participants included Jeffrey Carlisle, Monica Desai, Aaron Goldschmidt, Marcus Maher, Gina Spade, and John Stanley. During the meeting the participants discussed the materials filed by Z-Tel in this proceeding. In addition, specific assertions by SBC in its recent March 14, 2003 *ex parte* regarding Line Loss Notification ("LLN") and billing accuracy/auditability also were discussed, and Z-Tel addresses several of these SBC assertions in the paragraphs that follow.

1. Line Loss Notification. So far as Z-Tel can determine, the Commission has only addressed LLN as part of a section 271 evaluation in the BellSouth Georgia/Louisiana Order.¹ There, the Commission stated:

We conclude that the discrepancy in BellSouth's line loss reports does not appear to be indicative of a systemic problem with BellSouth's OSS and thus, does not warrant a finding of checklist noncompliance. In reaching

¹ *Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Georgia and Louisiana*, CC Docket No. 02-35, Memorandum Opinion and Order, 17 FCC Rcd 9018 (2002).

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this conclusion, we find that the discrepancies appear to be relatively limited in duration and scope and, based on this record, do not appear to be competitively significant. Moreover, we recognize that BellSouth has made repeated attempts to resolve these discrepancies and that WorldCom is the only carrier on the record that has raised this issue.²

In stark contrast to the situation in BellSouth's Louisiana/Georgia application, SBC's LLN shortcomings are (i) systemic, (ii) of on-going duration and scope, and most importantly (iii) competitively significant.

SBC's LLN failures are systemic. As noted in the Declaration of Ron A. Walters attached to Z-Tel's initial comments in this proceeding, Z-Tel has been hampered by SBC's LLN failures virtually since Z-Tel entered Michigan. Z-Tel entered the Michigan market in January 2001, and it has received over 7,500 double billing complaints from end users that have been double billed as a result of SBC's LLN failures.³ Although only about 11% of Z-Tel's customers reside in Michigan, nearly 20% of the LLN problems Z-Tel has encountered have occurred in Michigan. Moreover, these systemic problems continue to occur, and SBC itself has conceded that thousands of LLN errors have occurred as recently as March 6, 2003.

SBC's LLN failures are on-going, both in terms of duration and scope. In spite of repeated, historic claims to the contrary, SBC's LLN errors persist. On May 8, 2002, the Illinois Commerce Commission ("ICC") found that SBC was discriminating against Z-Tel (and presumably others) in providing LLN.⁴ On June 3, 2002, SBC conceded that it needed to engage in additional work to fix its LLN system.⁵ On June 10, 2002, Z-Tel and SBC identified 132 LLN errors in Michigan.⁶ On July 2, 2002, SBC asserted that its LLN problems in Michigan "were resolved."⁷ On August 12, 2002, KPMG's published report noted a LLN failure rate of nearly 20%.⁸ Between August 15, 2002 and September 11, 2002, SBC failed to transmit LLN to Z-Tel in 274 instances, despite SBC's claim to have fixed LLN problems.⁹ On November 12, 2002, SBC acknowledged problems with another 68 Z-Tel LLNs.¹⁰ Again, on March 6, 2003, SBC conceded to literally thousands of additional LLN failures. SBC has not disputed any of these documented LLN failures. Any claim by SBC to have "fixed" its LLN problems simply is not credible until such time SBC can support such a claim with demonstrated, consistent, and on-

² *Id.*, ¶ 163.

³ Walters Declaration, ¶ 6.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

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going satisfactory performance. Put another way, for SBC to demonstrate that its LLN system is fixed in terms of “duration and scope,” SBC must demonstrate a track record of success, not failure as the record currently shows.

Most importantly, SBC’s LLN failures are competitively significant. As noted above, Z-Tel has received over 7,500 customer double-billing complaints resulting from SBC’s LLN failures, even though Z-Tel’s Michigan customer base numbers only approximately 22,000 consumers.¹¹ This presents tremendous customer service and consumer protection issues that result from SBC’s persistently inadequate LLN system. Indeed, double billing due to SBC LLN failures has resulted in myriad consumer complaints against Z-Tel at the Michigan Public Service Commission and at the Michigan Attorney General’s office.¹² These double-billing errors have damaged Z-Tel’s reputation in Michigan, and on-going LLN problems only serve to exacerbate the harm to Z-Tel’s reputation in Michigan.¹³ As discussed below, the ICC directly noted that SBC’s failures cause considerable harm to competitors. There can be absolutely no doubt that double billing resulting from SBC’s LLN failures has and continues to create substantial competitive harm for Z-Tel and other CLECs operating in Michigan.

To be sure, Z-Tel believes that there is absolutely no way for SBC (and this Commission) to brush off the serious competitive issues that result from inadvertent double billing. Clear consumer protection issues and the business reputation of new entrants like Z-Tel are at stake. The ICC, in discussing the competitive impact of 3,300 double billing instances (in Illinois), stated that SBC’s “failure has injured and placed Z-Tel’s reputation in jeopardy.”¹⁴ Certainly, the 7,500 instances in Michigan give rise to even greater concerns, which the Commission cannot ignore.¹⁵

It is important to note that the LLN issue is not simply one of accuracy or timeliness – it is at its core a discrimination issue. Checklist item (ii) requires SBC to demonstrate and the Commission to find that SBC is providing “nondiscriminatory” access to its operations support systems (“OSS”). SBC cannot meet that burden because SBC’s retail winback unit has had access to a superior customer information database that Z-Tel and other

¹¹ *Id.*, ¶ 8.

¹² *Id.*

¹³ *Id.*

¹⁴ *Z-Tel Communications, Inc. v. Illinois Bell Telephone Company (Ameritech Illinois) – Verified Complaint and Request for Emergency Relief Pursuant to Sections 13-514, 13-515 and 13-516 of the Illinois Public Utilities Act*, Order (I.C.C. 2002) (“ICC Order”).

¹⁵ Even if SBC’s LLN performance were at 95% as it claims, it is important to note that such performance means that *one in twenty* CLEC customers risk being double billed if they leave the CLEC. For a company attempting to build a business reputation among consumers for reliable, residential and small business service, a one-in-twenty rate is, frankly, unacceptable. In addition, this belief blithely disregards the consumer protection issues at stake. What would the FCC say to a slammer whose defense amounts to its assertion that it has “only” slammed 5% of its customers?

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entrants cannot access. Indeed, in the ICC Order the ICC held that SBC, by failing to provide timely and accurate LLNs, discriminated in the provision of OSS to Z-Tel, and that SBC's conduct impeded competition in the local exchange market.¹⁶

SBC asserts in its March 14 filing that its retail unit "receive[s]" the same LLN that SBC provides to CLECs. That representation does not provide a complete picture.¹⁷ SBC fails to reveal that, although it may "receive[]" the "836 LLN" provided to CLECs, SBC's retail operations also have access to and receive information from *another* database, known as the Ameritech Service Order Negotiation ("ASON") system. Discovery and testimony in Z-Tel's Illinois complaint proceeding showed that this ASON database contains all customer change orders, edits, and account information for SBC's retail customers and Z-Tel's customers. Any change in a customer's service, including a disconnection, is provisioned through the ASON system. SBC's ASON system is the interface that SBC's retail service representatives use to create, edit, distribute, and control service orders, which are then available both in the ASON and in downstream systems. When a customer change order is completed, the ASON database sends a record of the change to another system, which then generates the 836 LLN for Z-Tel.

SBC's retail operations have direct data feeds into the ASON database, which allow SBC's retail operation to modify its customer account systems, *e.g.*, E911 account records, billing records, etc. So, if an SBC customer disconnects from SBC, the ASON System sends a data feed directly to SBC's retail ACIS billing system to *automatically* discontinue billing. While an 836 LLN may subsequently be sent to SBC's retail unit, the unit has already received, *automatically* and *electronically*, information to cease billing. In other words, for the purposes of avoiding double billing, SBC does not rely upon the 836 LLN and instead relies on the ASON System feed. Z-Tel and other competitors, without the ability to receive the ASON feed, must rely upon the timeliness and accuracy of the 836 LLN.

In other words, because it has the systematic data feeds from the ASON System, the quality of the 836 LLN does not matter to SBC's retail operations as much as that quality matters to Z-Tel and other entrants. As the ICC observed, "[t]he 836 LLN is relied on by Z-Tel for purposes of winning back Ameritech customer and also to stop billing customers that Z-Tel has lost. Ameritech's systems, on the other hand, automatically stop billing a customer when that customer switches carriers and creates the enhanced LLN for Winback purposes."¹⁸ The quality of the ASON interface – and corresponding discrimination against CLECs – is readily apparent when one recognizes that the Michigan Commission has not been deluged with tens of

¹⁶ ICC Order, 15-18.

¹⁷ SBC March 14 Ex Parte, Attachment A, ¶ 14.

¹⁸ ICC Order at 19.

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thousands of double billing complaints from former SBC customers that switch to CLECs.¹⁹ Indeed, Z-Tel knows of no such consumer complaint against SBC.

We also discussed the pending appeal of Z-Tel's ICC line-loss complaint and how that pendency might affect the Commission's decision. Z-Tel stressed that it has utilized private complaint procedures available to it under the Illinois Public Utility Act, and that the ICC has made specific findings regarding SBC's LLN system that are findings of fact and law made after full discovery, sworn testimony, and cross-examination that may support further remedies beyond those already ordered by the ICC. In this section 271 proceeding, the Commission should, as a matter of comity, specifically state that whatever determinations it makes regarding SBC's OSS, those determinations are not intended to take the place of or require reconsideration of specific factual and legal findings that may be or have been made by another applicable forum under other legal authority, such as, but not limited to, the Illinois Public Utility Act and other laws.

In Z-Tel's Illinois complaint proceeding, the ICC made specific factual findings about this discriminatory access to OSS. Evidence of this discriminatory access included testimony that revealed that "Ameritech's systems stop billing a customer immediately, without manual intervention, when a customer leaves Ameritech's service"; in contrast, the system for 836 LLNs for Z-Tel "includes faxing the local service center and manually entering information."²⁰ Z-Tel believes that as long as SBC gives its retail units access to its superior ASON system and that software upgrades that would enable nondiscriminatory access by competitors have not been fully deployed and tested in a commercial setting, SBC is providing discriminatory access to OSS, in violation of checklist item two.

2. Wholesale Billing Accuracy/Auditability. In our meeting, Z-Tel declarant Walters noted that Z-Tel presently has hundreds of open billing disputes with SBC, totaling approximately \$1.9 million – a significant percentage of Z-Tel's overall cash reserves. In its March 14 *ex parte*, SBC concedes that its recent bill reconciliation project revealed that it had overbilled CLECs by approximately \$17 million, apparently throughout the five-state former Ameritech service territory.²¹

At this time, Z-Tel has determined that it received a credit of 545,000 credit for the five-state territory during February 2003; however, SBC at the same time billed Z-Tel for an additional \$105,000 in new charges for a net impact of \$440,000 across the five-state region. Of

¹⁹ SBC claims in paragraph 15 of Attachment A to its March 14 *ex parte* that between September 2002 and January 2003, it successfully provided 96.70% of "over 1 million LLNs to its retail units." In other words, 33,000 836 LLNs were provided unsuccessfully and would potentially result in double-billing by SBC.

²⁰ ICC Order at 16.

²¹ *Id.*, Attachment B, 7. The former Ameritech territory includes Illinois, Indiana, Michigan, Ohio, and Wisconsin.

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these credits, only \$227,000 was Michigan. As a result, even after SBC's much-touted "reconciliation," Z-Tel continues to have over \$1.5m in on-going billing disputes with SBC for Michigan alone. Although even this nominal progress is helpful, Z-Tel does note that the timing of SBC's CABS reconciliation seems highly suspicious and indicates that at the time the application was filed, there were serious and significant problems with SBC's billing accuracy.

Finally, SBC's billing "reconciliation" marks a common thread between the LLN issue and billing accuracy: SBC continuously attempts to duct-tape its systems and processes with patches and fire-drill fixes. The Commission must insist that SBC resolve billing issues both in total and on a monthly-recurring basis. Until that happens, SBC simply cannot satisfy its obligation to provide nondiscriminatory operations support systems to Z-Tel and others.

Consistent with the foregoing and Z-Tel's other filings in this proceeding, SBC has failed to satisfy item two of the section 271 competitive checklist. As a result, SBC should withdraw its application and correct these and other material operational problems. Otherwise, the Commission should reject SBC's application. Should you have any questions or need additional information, please contact me on (703) 918-2300.

Sincerely,

/s/

Michael B. Hazzard

Counsel to Z-Tel Communications, Inc.

cc: Jeffrey Carlisle
Monica Desai
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Marcus Maher
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